

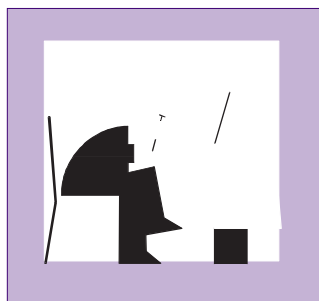
CHAPTER 3

NEW ISSUE

A. BLOOD SAMPLE TAKEN BY FORCE

1. BACKGROUND

During the process of conducting the complaints, the IPA tracks issues are of a very serious nature. One such blood samples were taken against the



audits of the investigation of civilian which appear with some frequency or issue involves complaints alleging that person's will at a place not suited or



appropriate for the safe and sanitary taking of blood. Complainants alleged that blood was drawn by a technician at the request of a police officer while the complainants were handcuffed, physically restrained or pinned to the ground outside the SJPD parking lot. The extraction of blood samples by contracted medical technicians are routinely requested by San José police officers for people arrested for felonies. Several of the people that came to the IPA or the PSCU to file a complaint had visible injuries to the area where the blood was drawn. This precipitated a closer review of existing SJPD policy and guidelines.

2. METHODOLOGY

A search of the IPA database for the last three years produced 12 complaints containing information that a blood sample was drawn forcibly. This search was not exhaustive or all inclusive because only a brief synopsis of the complainant's statement in each case is automated. The automated synopsis facilitates the identification of complaints where a particular issue is mentioned. However, it is highly possible that many other complaints exist, but are not referenced in this report. The automated search will not capture information in the body of the investigation.

Research of the SJPD's Duty Manual was conducted for existing policy or guidelines describing when and how blood should be drawn from an uncooperative person. In addition, case law such as Schmerber

v. California, 384 U.S. 757, and Rochin v. California, 342 U.S. 165, and California Vehicle Code Section 23158 were also analyzed. Sections of the J.P. Lippincott Manual of Nursing Practice, 4th edition, were reviewed. An inspection of the SJPD's Preprocessing Center and the loading ramp of the Santa Clara County Jail was conducted. Information from SJPD personnel was obtained. The Santa Clara County District Attorney's Office was contacted for input on this issue. Lastly, research gathered by an investigative reporter for *El Observador* was reviewed.

3. ANALYSIS

The forcible taking of a blood sample per se is seldom investigated by the PSCU as an allegation of unnecessary force because the compulsory seizure of a person's blood as evidence is not illegal, provided that the taking of the sample is done in a reasonable and medically approved manner. Therefore, this process is usually viewed as standard police procedure.

The SJPD Duty Manual section L2165.1⁸ provides general guidelines for the officers to follow. This section clearly states that forced blood specimens will not be taken from people arrested for misdemeanors. It further states that "a chemical test will be administered when the incident involves a felony violation." The manner in which a chemical test, more specifically a blood sample, is to be extracted, is not clearly specified.

⁸ L 2165.1
(REVISED 2/18/96)

TAKING OF SPECIMEN AGAINST SUSPECT'S WILL: Officers will adhere to the following appropriate procedures whenever a suspect refuses to consent to a chemical test of the suspect's blood, urine or breath.

ALL MISDEMEANORS (INCLUDING MISDEMEANOR DRUNK DRIVING): Tests will not be administered without the consent of the suspect unless such suspect is unconscious.

FELONY CASES: A chemical test will be administered when the incident involves a felony violation. When administering such a test, officers will remain aware that the courts will examine the method used to obtain the specimen and decide if such a method "shocks the conscience" of the suspect from whom the specimen was obtained. The following elements will be examined:

- Physical Injury. When the method used produces an injury that requires medical treatment, the courts are likely to view such a method as unwarranted.
- Nature of Resistance. When the nature of the suspect's resistance is verbal, accompanied by a lack of physical cooperation short of combative, and the officer administering the test merely positions the person's body or limbs so as to administer the test, such conduct by the officer will likely be viewed as warranted.
- Reasonableness: The courts will assess the circumstances of the incident as compared to the method used to administer the test. Circumstances which will be considered include, but are not limited to, the following: the nature of the crime; the necessity for obtaining the specimen; and whether the circumstances and facts present at the time the test was administered would be sufficient to lead an ordinary and prudent man to believe the method used as reasonable.

When a test is administered, the officer initiating the test will prepare a "Supplementary Report" (Form 200-3) reporting the circumstances and facts which indicate the reasonableness of the method used, the necessity, the resistive conduct of the suspect, and any witnesses present, especially the laboratory technician.

The courts have described the conduct that will be examined in determining whether the methods used would “shock the conscience” of the courts and be ruled inadmissible. This can include conduct that resulted in injuries, the nature of the suspect’s resistance, the reasonableness of the method used, and the existence of proper documentation. The SJPD Duty Manual does not identify the locations where this process should take place or describe what would constitute a medically acceptable environment for the drawing of blood.

When a person is arrested for a suspected felony, San José police officers transport the suspect to the Preprocessing Center located adjacent to the San José Police Department. In this center, the suspect generally will be booked, fingerprinted, interviewed, and placed in a locked cell to await transfer to the county jail. This center has over ten individual holding cells which are monitored by police staff. If the suspect is not combative the blood will be drawn in one of these rooms. If the suspect is violent or combative, then the arresting officer is barred from bringing the suspect into the center. Reasons given to the IPA were that it is difficult to move the suspect to and from the center, and because the suspect could create a disturbance. Therefore, the blood sample from individuals deemed violent or combative is extracted in the parking lot of the Preprocessing Center or the individual is taken directly to the county jail where the blood is drawn in what appears to be a loading ramp and/or a parking lot for authorized personnel. It is undisputed that, if necessary, an individual, while handcuffed with their hands behind their back, will be forced over the hood of a patrol car or held down by officers on the ground where a technician will extract the blood.

California Vehicle Code Section 23158 (d)⁹ states that the extraction of blood must be done in a reasonable manner, in a hospital, medical laboratory, or medical clinic environment. In all the court cases researched, the facts indicated that the blood had been drawn in a hospital setting by a nurse or doctor. There were no cases found where the blood specimen was extracted in a parking lot or similar location.

The police parking lot would not be deemed an appropriate medical environment. The SJPD and county jail parking lots are poorly lit, the ground is dirty, and equipment such as arm boards which

⁹ California Vehicle Code Section 23158 (d) Notwithstanding any other provision of law, no licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed clinical laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, or hospital, laboratory, or clinic employing or utilizing the services of the licensed physician and surgeon, registered nurse, licensed vocational nurse, duly licensed laboratory technologist or clinical laboratory bioanalyst, unlicensed laboratory personnel regulated pursuant to Sections 1242, 1242.5, and 1246 of the Business and Professions Code, or certified paramedic, owning or leasing the premises on which tests are performed, shall incur any civil or criminal liability as a result of the administering of a blood test in a reasonable manner in a hospital, medical laboratory, or medical clinic environment, according to accepted medical practices, without violence by the person administering the test, and when requested in writing by a peace officer to administer the test.

reduce the risk of infection or injury to the subject's veins or tissue are not available. Risk of injury to the technician or officers is also increased whenever a subject is wrestled to the ground and restrained for the extraction of blood.

While the courts have held that it is lawful to physically restrain a suspect for the purpose of drawing a blood sample, there are police agencies that will not forcibly draw blood samples from uncooperative suspects because of the high likelihood of injuries. The Santa Clara County District Attorney Office's position is that "the decision on when and how to draw blood of a criminal suspect is a decision for each investigative law enforcement agency to make." The leading case Schmerber v. California, 384 U.S. 757, at p. 771 (1966), held that taking a blood sample for the purpose of determining the blood alcohol level was reasonable provided it posed virtually no risk, trauma or pain, and was performed in a reasonable manner by a physician in a hospital. In People v. Kraft, 3 Cal. App. 3d 890, the court held that using force in the taking of a blood sample is acceptable, except where the force used is excessive. The excessive force alters the whole process making it medically unacceptable.

4. RECOMMENDATION

When taking blood specimens as evidence relevant to the crime at hand, the San José Police Department should do so in a medically accepted environment, according to accepted medical practices and without excessive force.